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10/575,297	04/11/2006	Bernd Schessl	2003P01288WOUS	3142

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/575,297	Applicant(s) SCHESSL ET AL.	
	Examiner /Stephen J. Castellano/	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3-8-10.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-30 is/are allowed.
- 6) ☒ Claim(s) 13-24, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-12 have been canceled. Claims 13-30 are pending.

The drawings are objected to because Fig. 2 a section view of a detail of the first embodiment crockery basket of Fig. 1 is very different from Fig. 1. The rack 3 is of a different configuration; (1) supporting clips 6 are not shown, (2) the wire profile of constant thickness is not shown, rather the profile of the rack is tapered from a wide thickness at the end proximal to the pivot pin 9 to a narrow thickness at the end distal to the pivot pin, (3) the pivot pin (9) is shown aligned with the top surface but not the bottom surface, and (4) there is a downwardly extending flange at the distal end of the rack. The framework is of a different configuration in Fig. 2 as the wires 7 (vertical wires at the right side) are perfectly vertical wherein in Fig. 1 the top portion of wires 7 are bent outwardly then bent vertically before their upper end. The position of the ladder 4 has been changed in Fig. 2 such that top horizontal wire 2 is engaged by clip 8 rather than a horizontal wire 2 spaced below the top horizontal wire 2 as shown in Fig. 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 32 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The holding element 5 is a part of the fixing ladder 4. The holding element has two arms, each arm extending inside the framework and including a hook-shaped member to support a pivot pin. However, the holding element 5 has only one height position. The holding element is not capable of having multiple or different height positions unless the holding element is physically detached and reattached in a different height position.

This is a lack of enablement rejection.

Claims 13-20 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (5480035).

Smith discloses a crockery basket comprising a framework (dishwasher rack), the framework including a common edge (the edge provided by the middle additional wire 15), at least one rack (shelf 20) and a plurality of holding elements (plates 22 or component parts of the plates) hold the rack at different height positions on the basket, both holding elements are

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secured on the common edge along a single side (the right side or half as shown in Fig. 1, this is more than just the right wall) of the framework (the framework has two sides a right side and a left side).

Re claims 13-17 and 22-23, a group of holding elements is defined by (hubs 50, 51 on the plates or end caps 22). The holding elements are indirectly secured on the common edge as the holding elements are attached to plate 22 much like the holding elements 5 are indirectly secured on the common edge because they are secured to ladder 4. A first group of holding elements (first device) is provided on a first end cap 22 and a second group of holding elements (second device) is provided on a second end cap 22. The groups of holding elements on an end cap 22 are configured as a fixing ladder with one holding element located above another to make the height of the shelf adjustable.

Re claim 18-20 and 24, insofar as disclosed by applicant the horizontal meshes merely need to be horizontal members. Smith discloses horizontal meshes 15 arranges one above the other, the rack has fixing structure as the bars or wires of the rack are fixed to the holding elements which engage the horizontal meshes.

Re claim 24, the rack has a mechanical stop that engages a stop (ribs 56, 57) of the end cap 22 (see col. 4, lines 3-7 and Fig. 2-3 and 5-7).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith.

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Smith discloses the fixing structure of the rack and the first device made of plastic as col. 3, lines 12-16 discuss the polypropylene material of the first device. Smith discloses the invention except for the plastic material of the fixing structure of the rack. Official notice was taken that racks of plastic are well known in the non-final Office action mailed January 6, 2010. The Official notice is now treated as a prior art admission. It would have been obvious to modify the material of the rack to be plastic to allow easier manufacturing by molding, to enhance durability, and to make from a readily available material.

Claims 13-22 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (5480035) in view of Remmers (4735325) and Luukkonen (5027959).

Smith discloses a crockery basket comprising a framework (dishwasher rack), the framework including a common edge (the edge provided by the middle additional wire 15), at least one rack (shelf 20) and a plurality of holding elements (plates 22) hold the rack at different height positions on the basket, the holding elements are secured on the common edge. If it should be deemed that Smith fails to disclose that both holding elements are secured to a single side, then Smith can be modified by Remmers and Luukkonen.

Remmers discloses a clip 40, the clip is made from plastic and is attached to a vertical member on the framework, two clips supported on a single side (one wall, the back wall as shown in Fig. 11) will attach a shelf made of two pairs of vertically spaced wires [(24, 26) and (28, 30)] and a plurality of horizontal deck wires 32.

Luukkonen is similar to Remmers and discloses a fastening member 7 which is supported by a support bar 3 upon which it rests and the upper surfaces of the fastening member supports wire shelves as shown in Fig. 2. A fastening member is used at each corner of a wire shelf (see

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Fig. 1) so that a plurality of holding elements (fastening elements 7) are secured on the common edge along a single side of the framework. The holding elements (fastening elements 7) are also arranged at different heights as shown in Fig. 1.

It would have been obvious to replace the plates 22 of Smith with either the clip 40 of Remmers, the fastening element 7 of Luukkonen or a combination of the teachings of both Remmers and Luukkonen, the holding elements are secured to the right side wall of Smith to provide a plurality of holding elements being secured on the common edge along a single side (one wall) of the framework.

Re claim 31, Remmers' clip 40 includes two sides that define a pair of arms that straddle the vertical support of the framework, each of the arms extend inside the framework and include a hook-shaped element to support the pivot pin of the rack. Also, Luukkonen's fastening member 7 includes two sides that define a pair of arms that straddle the vertical support wire of the framework, each of the arms extend inside the framework and include a hook-shaped element to support the pivot pin of the rack.

Claims 25-30 are allowed.

Claim 32 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed March 8, 2010 have been fully considered but they are not persuasive.

Re drawing objections, the drawing objections will be maintained. Applicant's explanation that several elements are not shown is not sufficient. This explanation would only

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partially address the objections made. Also, there is no statement in the written specification with regard to Fig. 2 that states that elements are not shown and why these elements have been omitted. Additional structure is shown in Fig. 2 which should be seen in Fig. 1. However, these elements are not shown in Fig. 1. There is no discussion or explanation of this discrepancy.

Applicant's arguments filed March 8, 2010 have been fully considered but they are not persuasive. Re Smith, applicant interprets single side to mean "single wall." Examiner applies a broader interpretation wherein single side means "one half of a framework with a right side/half and a left side/half (only two sides).

A new ground of rejection is made in view of Smith, Remmers and Luukkonen.

A new ground of rejection is made in view of new language in claim 32 which is not enabled by the specification.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc